

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

LISA GUTHRIE,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 1:15-CV-03204-MKD

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

ECF Nos. 14, 16

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 14, 16. The parties consented to proceed before a magistrate judge. ECF No. 5. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 14) and grants Defendant's motion (ECF No. 16).

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
3 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The
4 party appealing the ALJ’s decision generally bears the burden of establishing that
5 it was harmed. *Shineski v. Sanders*, 556 U.S. 396, 409-410 (2009).

6 **FIVE-STEP EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
13 impairment must be “of such severity that he is not only unable to do his previous
14 work[,] but cannot, considering his age, education, and work experience, engage in
15 any other kind of substantial gainful work which exists in the national economy.”
16 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
12 §§ 404.1520(c); 416.920(c).

13 At step three, the Commissioner compares the claimant’s impairment to
14 severe impairments recognized by the Commissioner to be so severe as to preclude
15 a person from engaging in substantial gainful activity. 20 C.F.R. §§
16 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
17 severe than one of the enumerated impairments, the Commissioner must find the
18 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

19 If the severity of the claimant’s impairment does not meet or exceed the
20 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant's "residual functional capacity." Residual functional capacity (RFC),
2 defined generally as the claimant's ability to perform physical and mental work
3 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
4 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
5 analysis.

6 At step four, the Commissioner considers whether, in view of the claimant's
7 RFC, the claimant is capable of performing work that he or she has performed in
8 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
9 If the claimant is capable of performing past relevant work, the Commissioner
10 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
11 If the claimant is incapable of performing such work, the analysis proceeds to step
12 five.

13 At step five, the Commissioner considers whether, in view of the claimant's
14 RFC, the claimant is capable of performing other work in the national economy.
15 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
16 the Commissioner must also consider vocational factors such as the claimant's age,
17 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
18 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
20 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other

1 work, analysis concludes with a finding that the claimant is disabled and is
2 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).
3 The claimant bears the burden of proof at steps one through four above. *Tackett v.*
4 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,
5 the burden shifts to the Commissioner to establish that (1) the claimant is capable
6 of performing other work; and (2) such work “exists in significant numbers in the
7 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.920(c)(2); *Beltran v. Astrue*,
8 700 F.3d 386, 389 (9th Cir. 2012).

9 **ALJ’S FINDINGS**

10 Plaintiff applied for disability insurance benefits and supplemental security
11 income on April 24, 2012. Tr. 166-73. In both applications, Plaintiff alleged a
12 disability onset date of July 15, 2011. Tr. 21. The applications were denied
13 initially, Tr. 119-25, and on reconsideration, Tr. 129-33. Plaintiff appeared at a
14 hearing before an administrative law judge (ALJ) on March 12, 2014. Tr. 41-73.
15 On April 17, 2014, the ALJ denied Plaintiff’s claim. Tr. 21-33.

16 At the outset, the ALJ found that Plaintiff met the insured status
17 requirements of the Act with respect to her disability insurance benefit claim
18 through December 31, 2013. Tr. 23. At step one, the ALJ found that Plaintiff has
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1 engaged in substantial gainful activity since January 13, 2013,¹ Tr. 23, but prior to
2 that date, there was a continuous 12-month period during which Plaintiff did not
3 engage in substantial gainful activity. Tr. 24. At step two, the ALJ found that
4 Plaintiff has the following severe impairments: degenerative disc disease with back
5 pain and depression. Tr. 24. At step three, the ALJ found that Plaintiff does not
6 have an impairment or combination of impairments that meets or medically equals
7 a listed impairment. Tr. 26. The ALJ then concluded that, prior to January 13,
8 2013, Plaintiff had the RFC to perform a range of light work, with additional
9 limitations:

10 ... the claimant had the residual functional capacity to lift and/or carry up to
11 20 pounds occasionally and 10 pounds frequently, stand and/or walk up to 2
12 hours in an eight-hour workday, and sit without specific limitation. The
13 claimant should not be required to climb, other than ramps and stairs, and
she could occasionally stoop. The claimant could sustain work of a simple
and routine nature, and occasionally perform more complex tasks, but
complex work on a routine basis might well be problematic.

14 Tr. 27-28.

15 At step four, the ALJ found that Plaintiff is unable to perform her past
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17 ¹ The ALJ found Plaintiff testified that she returned to work, as a cashier at a truck
18 stop, in January 2013. Tr. 23 (citing Tr. 44-45). Further, the ALJ found Plaintiff's
19 earnings records show that her income has exceeded SGA since January 13, 2013.
20 Tr. 23-24 (citing Ex. 5D at Tr. 184; Ex. 6D at Tr. 185-86).

1 relevant work. Tr. 31. At step five, the ALJ found that, considering Plaintiff's
2 age, education, work experience, RFC, and the testimony of a vocational expert,
3 prior to January 13, 2013, there were jobs in significant numbers in the national
4 economy that Plaintiff could perform, such as cashier, small products assembler,
5 and fishing rod assembler. Tr. 32. On that basis, the ALJ concluded that Plaintiff
6 was not disabled as defined in the Social Security Act from July 15, 2011, through
7 the date of the decision. Tr. 33.

8 On September 28, 2015, the Appeals Council denied review, Tr. 1-6, making
9 the Commissioner's decision final for purposes of judicial review. *See* 42 U.S.C. §
10 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

11 ISSUES

12 Plaintiff seeks judicial review of the Commissioner's final decision denying
13 her disability income benefits under Title II and supplemental security income
14 benefits under Title XVI of the Social Security Act. ECF No. 14. Plaintiff raises
15 the following issues for this Court's review:

- 16 1. Whether the ALJ properly determined Plaintiff's severe impairments at
17 step two;
- 18 2. Whether the ALJ properly discredited Plaintiff's symptom claims; and
- 19 3. Whether the ALJ properly weighed the medical opinion evidence.

20 ECF No. 14 at 5.

DISCUSSION

A. Step Two

First, Plaintiff faults the ALJ for finding that the diagnosis of ankylosing spondylitis² was not medically determined and for failing to find carpal tunnel syndrome (CTS) a severe impairment at step two of the sequential evaluation. ECF No. 14 at 6-9.

1. Ankylosing Spondylitis

Plaintiff contends the ALJ erred by finding that ankylosing spondylitis was not a medically determined impairment. ECF No. 14 at 8-9. The ALJ found that the record contains conflicting evidence and failed to establish that this was a medically determinable impairment. Tr. 25.

A physical or mental impairment is one that “results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.” 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D). An impairment must be established by medical

² Ankylosing spondylitis is an inflammatory disease that, over time, can cause some of the vertebrae in the spine to fuse.

www.mayoclinic.org/diseases.../ankylosing-spondylitis/...ovc-20261048.

1 evidence consisting of signs, symptoms, and laboratory findings, and “under no
2 circumstances may the existence of an impairment be established on the basis of
3 symptoms alone.” *Ukolov v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005) (citing
4 SSR 96–4p, 1996 WL 374187 (July 2, 1996)) (defining “symptoms” as an
5 “individual’s own perception or description of the impact of” the impairment).

6 The fact that a medically determinable condition exists does not
7 automatically mean the symptoms are “severe” or “disabling” as defined by the
8 Social Security regulations. *See, e.g., Edlund v. Massanari*, 253 F.3d 1152, 1159-
9 60 (9th Cir. 2001); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Key v.*
10 *Heckler*, 754 F.2d 1545, 1549-50 (9th Cir. 1985). An impairment, to be considered
11 severe, must significantly limit an individual’s ability to perform basic work
12 activities. 20 C.F.R. § 416.920(c); *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
13 1996). An impairment is not severe if it does not significantly limit a claimant’s
14 physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1521(a),
15 416.921(a).³ An impairment does not limit an ability to do basic work activities
16 where it “would have no more than a minimal effect on an individual’s ability to
17 work.” *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988).

18
19 ³ The Supreme Court upheld the validity of the Commissioner’s severity regulation,
20 as clarified in S.S.R. 85-28, in *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987).

1 Basic work activities include walking, standing, sitting, lifting, pushing,
2 pulling, reaching, carrying, or handling; seeing, hearing, and speaking;
3 understanding, carrying out and remembering simple instructions; responding
4 appropriately to supervision, coworkers and usual work situations; and dealing
5 with changes in a routine work setting. 20 C.F.R. §§ 404.1521(b), 416.1521(b);
6 S.S.R. 85-28.

7 Plaintiff bears the burden to establish the existence of a severe impairment
8 or combination of impairments, which prevent her from performing substantial
9 gainful activity and that the impairment or combination of impairments lasted for
10 at least twelve consecutive months. 20 C.F.R. §§ 404.1512(a); *Edlund v.*
11 *Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2011). However, step two is “a *de*
12 *minimus* screening device used to dispose of groundless claims.” *Smolen*, 80 F.3d
13 at 1290. “Thus, applying our normal standard of review to the requirements of
14 step two, we must determine whether the ALJ had substantial evidence to find that
15 the medical evidence clearly established that [Plaintiff] did not have a medically
16 severe impairment or combination of impairments.” *Webb v. Barnhart*, 433 F.3d
17 683, 687 (9th Cir. 2005).

18 The ALJ is responsible for determining credibility and resolving conflicts in
19 medical testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)
20 (Where medical reports are inconclusive, “ ‘questions of credibility and resolution

1 of conflicts in the testimony are solely functions of the Secretary.’ ”).

2 Here, the ALJ found, for example that although Plaintiff’s rheumatologist,
3 Daniel Sager, M.D., never definitively diagnosed ankylosing spondylitis,
4 Plaintiff’s primary care physician, Dr. Luera, nonetheless repeated it as a diagnosis
5 in her treatment records. Tr. 25 (citing Tr. 396) (in July 2012, treatment records by
6 Dr. Sager note that “[a]nkylosing spondylitis remains *theoretically possible* as a
7 significant factor in [Plaintiff’s] symptomology... [Plaintiff] understands it is
8 possible she does not have ankylosing spondylitis.”⁴) (emphasis added); *compare*
9 *with* Tr. 568 (in March 2014, Dr. Luera lists a diagnosis of ankylosing spondylitis).
10 Inconsistently, in August 2011, Dr. Luera noted that Plaintiff “has seen the
11 rheumatologist who did not believe that she had Ankylosing Spondylitis.” Tr. 344.
12 The ALJ found, as another example, that objective imaging supports only the
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15 ⁴ Not noted by the ALJ, but also supporting his finding are numerous other records
16 of Dr. Sager’s indicating only “possible ankylosing spondylitis” and that the
17 condition is “difficult to objectify.” *See, e.g.*, Tr. 286 (in June 2010, Dr. Sager
18 noted it is a possible diagnosis, but hard to objectify); Tr. 317 (in May 2011, Dr.
19 Sager indicated that if Plaintiff does not have ankylosing spondylitis, she may
20 benefit from a neurosurgical opinion).

1 diagnoses of degenerative disc disease and sacroiliitis.⁵ Tr. 24-25 (citing Tr. 382-
2 83; Tr. 455-56); (a lumbar MRI in December 2011 showed mild degenerative
3 changes at the L4-L5 level, but the image was otherwise unremarkable); Tr. 24
4 (citing Tr. 639) (a pelvic MRI in October 2012 noted bilateral sacroiliitis). The
5 ALJ found, as a further example, that records from neurologist Dr. Moser in
6 October 2011 indicated that Plaintiff's rheumatologist thought Plaintiff's spine
7 pain was due to sacroiliitis rather than ankylosing spondylitis. Tr. 25 (citing Tr.
8 350-52). Because it is the ALJ's responsibility to weigh and assess conflicting
9 medical evidence, the undersigned finds the ALJ properly found that ankylosing
10 spondylosis is not a medically determinable impairment in this case.

11 Even assuming, *arguendo*, that substantial evidence did not support the
12 ALJ's finding that ankylosing spondylitis was not a severe impairment at step two,
13 the error is harmless if the ALJ continues beyond step two and considers relevant
14 limitations at step four. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007).
15 Here, the ALJ found at step two that degenerative disc disease with back pain was
16 a severe impairment, and the assessed RFC took this into account. *See* Tr. 27-28

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18 ⁵ Sacroiliitis is an inflammation of one or both sacroiliac joints – situated where the
19 lower spine and pelvis connect. [www.mayoclinic.org/diseases-](http://www.mayoclinic.org/diseases-conditions/sacroiliitis/home/ovc-20166357)
20 [conditions/sacroiliitis/home/ovc-20166357](http://www.mayoclinic.org/diseases-conditions/sacroiliitis/home/ovc-20166357).

1 (RFC to sit without specific limitation, and stand and/or walk two hours in an
2 eight-hour workday); Tr. 29 (noting Plaintiff's testimony that her current job
3 requires her to stand eight hours a day and this is very painful). Plaintiff does not
4 indicate how ankylosing spondylitis, specifically, resulted in limitations beyond
5 those included in the assessed RFC. Accordingly, any error in this regard at step
6 two is clearly harmless. *See Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir.
7 1990) (finding ALJ error harmless because it did not affect the result).

8 2. *Carpal Tunnel Syndrome*

9
10 Plaintiff contends the ALJ should have found at step two that carpal tunnel
11 syndrome (CTS) was a severe impairment. ECF No. 14 at 6-8.

12 The ALJ found that the medical record does not establish that CTS is an
13 impairment that has or will limit Plaintiff's functioning for twelve continuous
14 months, as required. Tr. 25. *See Krumpelman v. Heckler*, 767 F.2d 586, 587 (9th
15 Cir. 1985) (noting 12-month minimum "continuous period requirement" for
16 disability); *see also Miller v. Colvin*, 174 F. Supp. 3d 1210, 1219 (D. Ariz. 2016)
17 (citing 42 U.S.C. § 423(d)(1)(A) (defining disability as the "inability to engage in
18 any substantial gainful activity by reason of any medically determinable physical
19 or mental impairment which can be expected to last for a continuous period of not
20 less than twelve months[.]")). The ALJ found that the objective medical evidence

failed to show that CTS caused significant vocational limitations for the requisite
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1 twelve months. Tr. 25. The ALJ found, for example, that Plaintiff testified she
2 underwent carpal tunnel release in August and September 2012, Tr. 28 (citing Tr.
3 57), and it is undisputed that Plaintiff's release surgeries were successful. Tr. 28;
4 *see, e.g.*, Tr. 400 (after carpal tunnel release on the right hand, Plaintiff indicated
5 that pain in her right hand had resolved); Tr. 57 (Plaintiff testified after the
6 surgeries, the results were "good"); Tr. 429 (carpal tunnel release on the left was
7 performed September 11, 2012 with no complications). In addition, the ALJ found
8 Plaintiff testified that she has only some occasional numbness on the sides of her
9 palms currently. Tr. 28 (citing Tr. 57). The ALJ further found, significantly, that
10 Plaintiff has been able to work at SGA levels as a cashier since January 2013. Tr.
11 28, 31 (citing Tr. 51-53).

12 Plaintiff faults the ALJ for failing to find that CTS limited her functioning
13 for twelve continuous months prior to her return to work in January 2013.
14 Specifically, she contends that, because she was first treated for CTS in June 2011,
15 and did not have surgery until August and September 2012, a period longer than
16 one year, the ALJ should have found that CTS was a severe impairment during this
17 closed period. ECF No. 14 at 7 (citing Tr. 433) (a preoperative report in August
18 2012 notes recent EMG studies rate Plaintiff's median nerve compression as
19 "moderate to severe").
20

1 The ALJ found, however, that nerve conduction studies in October 2011
2 documented only mild to moderate bilateral CTS. Tr. 26 (citing Tr. 350). The
3 ALJ further found that exam findings, also in October 2011, revealed full range of
4 motion of the shoulders, elbows, and wrists; Tinel's sign and Phalen's maneuver
5 were both negative. Tr. 25 (citing Tr. 350). Less than twelve months later, in
6 August and September 2012, Plaintiff underwent bilateral release surgeries. Tr. 25
7 (citing Tr. 377, 477).

8 It is Plaintiff's burden to establish disability. *Tackett*, 180 F.3d at 1098 (the
9 claimant bears the burden of proof at steps one through four). If the evidence in
10 the record "is susceptible to more than one rational interpretation, [the court] must
11 uphold the ALJ's findings if they are supported by inferences reasonably drawn
12 from the record." *Molina*, 674 F.3d at 1111. Here, the ALJ's finding that Plaintiff
13 failed to establish that CTS caused significant vocational limitations for twelve
14 continuous months is supported by the record.

15 **B. Adverse Credibility Finding**

16
17 Next, Plaintiff faults the ALJ for failing to provide specific findings with
18 clear and convincing reasons for discrediting her symptom claims. ECF No. 14 at
19 9-14.

1 An ALJ engages in a two-step analysis to determine whether a claimant's
2 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must
3 determine whether there is objective medical evidence of an underlying
4 impairment which could reasonably be expected to produce the pain or other
5 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
6 "The claimant is not required to show that her impairment could reasonably be
7 expected to cause the severity of the symptom she has alleged; she need only show
8 that it could reasonably have caused some degree of the symptom." *Vasquez v.*
9 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

10 Second, "[i]f the claimant meets the first test and there is no evidence of
11 malingering, the ALJ can only reject the claimant's testimony about the severity of
12 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
13 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting
14 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). "General findings are
15 insufficient; rather, the ALJ must identify what testimony is not credible and what
16 evidence undermines the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81
17 F.3d 821, 834 (9th Cir. 1995); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir.
18 2002) ("[T]he ALJ must make a credibility determination with findings sufficiently
19 specific to permit the court to conclude that the ALJ did not arbitrarily discredit
20 claimant's testimony."). "The clear and convincing [evidence] standard is the most

1 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
2 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
3 924 (9th Cir. 2002)).

4 In making an adverse credibility determination, the ALJ may consider, *inter*
5 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
6 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s
7 daily living activities; (4) the claimant’s work record; and (5) testimony from
8 physicians or third parties concerning the nature, severity, and effect of the
9 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

10 This Court finds the ALJ provided specific, clear, and convincing reasons
11 for finding that not all of Plaintiff’s symptom allegations are credible. Tr. 28.

12 *1. Lack of Objective Evidence*

13 The ALJ found that the objective medical evidence did not support the
14 degree of physical or psychiatric limitation alleged by Plaintiff. Tr. 29, 31.
15 Subjective testimony cannot be rejected solely because it is not corroborated by
16 objective medical findings, but medical evidence is a relevant factor in determining
17 the severity of a claimant’s impairments. *Rollins v. Massanari*, 261 F.3d 853, 857

(9th Cir. 2001); 20 C.F.R. §416.929(c)(2); *see also* S.S.R. 96-7p.⁶ With respect to Plaintiff's alleged physical impairments, as the ALJ noted, the medical records did not show symptoms so severe that they prevent work activities within the assessed RFC. Tr. 31. The ALJ set out, in detail, the medical evidence regarding Plaintiff's impairments, and ultimately concluded that her allegations were inconsistent with the medical evidence. Tr. 29-31.

The ALJ found, for example, that Plaintiff's complaints were inconsistent with the largely benign nature of physical examination and objective findings. Tr. 29. The ALJ noted several instances in the medical record supporting this conclusion. Tr. 29 (citing Tr. 350) (on physical examination in October 2011, despite loss of vibration and temperature in the feet, Emily Moser, M.D., found that Plaintiff's gait and station were normal); Tr. 424 (on physical examination in

⁶ S.S.R. 96-7p was superseded by S.S.R. 16-3p, effective March 28, 2016, *see* Federal Register 15776-01. Contrary to Plaintiff's characterization, ECF No. 14 at 10-11, the new ruling provides that the consistency of a claimant's statements with objective medical evidence and other evidence is a factor in evaluating a claimant's symptoms. S.S.R. 16-3p at *6. Nonetheless, S.S.R. 16-3p was not effective at the time of the ALJ's decision and therefore does not apply in this case.

1 May of 2012, Henry Kim, M.D., noted no significant tenderness of the lumbar
2 spine, but severe limitation with extension; however, Dr. Kim also found that
3 straight leg raising was negative, hip range of motion was intact on both sides, and
4 neurologically, Plaintiff demonstrated intact motor strength in the lower
5 extremities). The ALJ further found that many other treatment records were
6 devoid of any significant examination findings. Tr. 29 (citing Tr. 406) (in July
7 2012, treating physician Dr. Luera noted that Plaintiff's fibromyalgia pain⁷ was
8 much better than the prior month; the only examination finding indicated was
9 "poor posture"); (citing Tr. 400) (in September 2012, Dr. Luera noted pain is
10 improved; again the only objective exam finding noted is "poor posture"). With
11 respect to objective findings, the ALJ noted, for example, that a December 2011
12 lumbar MRI showed mild degenerative changes at the L4-L5 level, but was
13 otherwise unremarkable. Tr. 24 (citing Tr. 383-84). Because an ALJ may discount
14 pain and symptom testimony based on lack of medical evidence, as long as it is not
15 the sole basis for discounting a claimant's testimony, the ALJ did not err when he
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18 ⁷ Plaintiff does not challenge the ALJ's finding at step two that fibromyalgia is not
19 a medically determinable impairment, Tr. 25; accordingly, the Court does not
20 address it.

1 found Plaintiff's complaints exceeded and were not supported by objective and
2 physical examination findings.

3 With respect to mental health related impairments, the ALJ found that the
4 objective evidence did not show that Plaintiff's psychiatric impairments would
5 prevent her from working. Tr. 31. The ALJ found, for example, that a
6 consultative examination performed by Pamela Miller, Ph.D., in October 2012
7 revealed essentially normal functioning. Tr. 31 (citing Tr. 487-88) (noting, in part,
8 that memory is normal, and concentration and attention are good). The ALJ found
9 that Dr. Miller performed a thorough interview and conducted a mental status
10 examination; she diagnosed major depressive disorder and assessed a GAF of 62,⁸
11 indicating no more than moderate (mild) symptoms or functional impairment. Tr.
12 31 (citing Tr. 488). The ALJ further found that Dr. Miller opined Plaintiff is able
13 to understand and remember instructions; maintain attention and concentration;
14 engage in normal social interactions; and adapt to change. Tr. 31 (citing Tr. 488).
15 The ALJ also found that, although Plaintiff usually functions well, Dr. Miller

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17 ⁸ A Global Assessment of Functioning (GAF) of 62 indicates mild symptoms or
18 some difficulty in social, occupational, or school functioning. *American*
19 *Psychiatric Ass'n*, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL
20 DISORDERS, Fourth Ed. at 32.

1 opined that when she is in pain or depressed, Plaintiff often avoids people. Tr. 31
2 (citing Tr. 488).

3 The ALJ further found that Dr. Miller's opinion is consistent with Plaintiff's
4 history of minimal treatment. Tr. 31. An ALJ may consider lack of treatment in
5 his credibility determination. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.
6 2005). The ALJ found, for instance, that Plaintiff testified she has never
7 undergone counseling and had not taken any psychotropic medication (prescribed
8 by Dr. Luera) for five to six months, both indicating that she suffers no more than
9 mild symptoms or functional limitations. Tr. 31 (citing Tr. 62-63). Moreover, the
10 ALJ further found that, as another example, Plaintiff testified that she was working
11 full-time (as a cashier at a busy truck stop), another strong indication that Plaintiff
12 does not suffer disabling psychological symptoms or limitations. Tr. 31 (citing Tr.
13 51-52). The ALJ's finding that Plaintiff's allegations of disabling mental health
14 symptoms are inconsistent with the overall findings is supported by substantial
15 evidence.

16 *2. Improvement with Treatment*

17 Next, the ALJ found that appropriate treatments and medication have been
18 effective, indicating that Plaintiff's more dire symptom complaints are less than
19 credible. Tr. 29. The effectiveness of medication and treatment is a relevant factor
20 in determining the severity of a claimant's symptoms, 20 C.F.R. § 404.1529(c)(3),

1 416.929(c)(3); *see Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th
2 Cir. 2006) (Impairments that can be controlled effectively with medication are not
3 disabling for the purpose of determining eligibility for benefits). The ALJ found,
4 for example, that in January 2012, treating physician Dr. Luera noted that Plaintiff
5 reported improvement in her pain level following an increase in the prescribed
6 dose of hydrocodone; Plaintiff stated that this allowed her to both move better and
7 more often. Tr. 29 (citing Tr. 369). The ALJ further noted that at the same
8 appointment, Plaintiff reported to Dr. Luera that she was able to walk her dog more
9 often and had volunteered to paint a local church, further indicating the
10 effectiveness of the increase in medication in controlling Plaintiff’s symptoms. Tr.
11 29 (citing Tr. 369). Moreover, the ALJ found that in August 2013, Dr. Luera noted
12 that since changing Plaintiff’s medication to Percoset, Plaintiff reported she felt
13 much better and, significantly, was able to work full time. Tr. 29 (citing Tr. 582).
14 As a further example, the ALJ also found that Plaintiff reported significant
15 improvement in her hand symptoms after carpal tunnel release surgery. Tr. 29
16 (citing Tr. 400) (Plaintiff reported the numbness and tingling in her right hand
17 were gone after release surgery); *see also* Tr. 57 (Plaintiff testified that her results
18 following surgery were “good.”). This was a clear and convincing reason to find
19 Plaintiff less than credible.

1 3. *Daily Activities*

2 The ALJ found that Plaintiff's subjective complaints are inconsistent with
3 her daily activities. Tr. 26, 29. If a claimant is able to spend a substantial part of
4 her day engaged in pursuits involving the performance of physical functions that
5 are transferrable to a work setting, a specific finding as to this fact may be
6 sufficient to discredit a claimant's allegations. *Morgan v. Comm'r of Soc. Sec.*
7 *Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) (citing *Fair*, 885 F.2d at 603 (9th Cir.
8 1989)). Alternatively, when activities "contradict claims of a totally debilitating
9 impairment," an ALJ may discredit a claimant's testimony. *Molina*, 674 F.3d at
10 1112-13 (internal quotation marks and citations omitted).

11 Here, the ALJ found that Plaintiff reported to Pamela Miller, Ph.D., during
12 an October 2012 consultative evaluation that, when feeling physically well, she
13 was able to persist and independently performed most daily activities. Tr. 26
14 (citing Tr. 488). The ALJ found, for example, that Plaintiff reported she was able
15 to take care of her personal hygiene and grooming, complete household tasks,
16 cook, drive, purchase groceries, use the phone, and manage money. Tr. 26 (citing
17 Tr. 488). As another example, the ALJ found that Plaintiff reported in an undated
18 function report that she cared for pets, had no difficulty with self-care activities,
19 prepared simple meals, and performed household chores, including cleaning and
20 laundry. Tr. 26 (citing Tr. 221-23). As another example, that in the same function

1 report, Plaintiff indicated that she could count change, pay bills, handle a savings
2 account, and use a checkbook/money orders. Tr. 26 (citing Tr. 223). In addition,
3 Plaintiff further stated that she visited friends and her aunt occasionally, and went
4 to church and the store when she felt good. Tr. 27 (citing Tr. 224). Moreover, in
5 January 2012, Plaintiff told Dr. Luera that an increase in prescribed pain
6 medication allowed her to move better and more often; she was able to walk her
7 dog more and, as noted, Plaintiff even reported that she had volunteered to paint a
8 local church. Tr. 29 (citing Tr. 369). The ALJ also found that after another
9 medication change in August 2013, Plaintiff told Dr. Luera that she felt much
10 better and she was able to work full-time. Tr. 29 (citing Tr. 582). The ALJ
11 provided another clear and convincing reason to find Plaintiff's symptom
12 testimony less than fully credible.

13 Plaintiff alleges that her "more than reasonable request for a closed period of
14 benefits should speak to her credibility and honest pursuit of her entitled benefits."

15 ECF No. 14 at 14. Plaintiff offers a different interpretation of the evidence.

16 However, where the evidence is susceptible to more than one rational
17 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion
18 must be upheld. *Thomas*, 278 F.3d at 954 (citing *Morgan*, 169 F.3d at 599).

19 In sum, the ALJ provided specific, clear and convincing reasons, supported
20 by the record, for rejecting Plaintiff's testimony. *See Ghanim*, 763 F.3d at 1163.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 25

C. Medical Opinion Evidence

Plaintiff next faults the ALJ for improperly weighing the medical opinion evidence of treating physician Natalia Luera, M.D., who offered four opinions of Plaintiff's functioning. In August 2011, Dr. Luera assessed an RFC for sedentary work. Tr. 30 (citing Tr. 340); in October 2011, an RFC for light work (citing Tr. 345); in March 2012, again an RFC for light work; and in March 2014, an RFC for sedentary work but with three days of absenteeism from work per month (citing Tr. 569). The ALJ gave the last opinion little weight.

There are three types of physicians: "(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant's file (nonexamining or reviewing physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). "Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." *Id.* "In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists." *Id.* (citations omitted).

1 If a treating or examining physician's opinion is uncontradicted, an ALJ may
2 reject it only by offering "clear and convincing reasons that are supported by
3 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
4 "However, the ALJ need not accept the opinion of any physician, including a
5 treating physician, if that opinion is brief, conclusory and inadequately supported
6 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
7 (9th Cir. 2009) (internal quotation marks and brackets omitted). "If a treating or
8 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ
9 may only reject it by providing specific and legitimate reasons that are supported
10 by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-
11 31).

12 This Court find the ALJ provided several specific and legitimate reasons,
13 supported by substantial evidence, for discrediting some of the assessed
14 limitations.

15 *1. Dr. Luera*

16 Plaintiff contends the ALJ erred by rejecting the March 2014 opinion of
17 treating physician Natalia Luera, M.D. ECF No. 14 at 14 (citing Tr. 30). Here,
18 because Dr. Luera's opinion is contradicted in part by the agency reviewing
19 sources, Tr. 98-114, the ALJ was required to provide specific and legitimate
20 reasons for discounting it. *Bayliss*, 427 F.3d at 1216.

1 In March 2014, Dr. Luera opined that Plaintiff needed to lie down during the
2 day, and would miss three or more days of work each month. Tr. 569. The ALJ
3 gave greater credit to Dr. Luera's assessed RFC for light work (Tr. 345) than for
4 sedentary, Tr. 30 (citing Tr. 357), and rejected Dr. Luera's opinion of Plaintiff's
5 likely absenteeism. Tr. 39 (citing Tr. 568-70).

6 First, the ALJ found that Dr. Luera's opinions are inconsistent. Tr. 30-31.
7 An ALJ may properly reject opinions that are internally inconsistent. *Nguyen v.*
8 *Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996). An ALJ is not obliged to credit
9 medical opinions that are unsupported by the medical source's own data or
10 contradicted by the opinions of other examining sources. *Tommasetti v. Astrue*,
11 533 F.3d 1035, 1041 (9th Cir. 2008). Here, the ALJ found that, in the past, Dr.
12 Luera had assessed an RFC for light work; however, there is no objective evidence
13 in the record to support that Plaintiff's condition had greatly deteriorated by the
14 time of Dr. Luera's March 2014 opinion. Tr. 30 (*comparing* Tr. 345 (in August
15 2011, Dr. Luera assessed an RFC for light work); Tr. 357 (in March 2012, Dr.
16 Luera again assessed an RFC for light work); *with* Tr. 569 (in March 2014, Dr.
17 Luera assessed an RFC for less than a full range of sedentary work)). Similarly,
18 whether Dr. Luera assessed light or sedentary work, she opined that Plaintiff's
19 participation in training or employment activities was nonetheless appropriate, Tr.
20 30 (citing Tr. 354), which also appears inconsistent with her opinion that Plaintiff

1 is more severely limited.

2 In addition, the ALJ found that Dr. Luera's extreme assessments set forth in
3 the March 2014 opinion were inconsistent with her own lack of objective findings
4 on examination. Tr. 30. The ALJ found that the only objective findings noted by
5 Dr. Luera were decreased range of motion in the lumbar spine, with muscle tension
6 on one occasion. Tr. 30 (citing Tr. 342, 344) (exam findings in August 2011 note
7 decreased lumbar spine range of motion); Tr. 347, 349 (exam findings in October
8 2011 are the same); (citing Tr. 355, 357) (exam findings in March 2012 also note
9 muscle tension and spasms). This was a specific, legitimate reason to give limited
10 weight to Dr. Luera's opinion.

11 Next, the ALJ found that Dr. Luera's opinions are inconsistent with other
12 opinions and evidence in the record indicating that Plaintiff is able to function at a
13 higher level than that assessed by Dr. Luera. Tr. 30. An ALJ may discredit a
14 physician's opinions that are unsupported by the record as a whole. *Batson v.*
15 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). The ALJ
16 found, for example, that agency reviewing physician Dr. Ignacio reviewed the
17 evidence, including treating records and Plaintiff's reported activities, and opined
18 that Plaintiff was able to sit, stand and/or walk six hours in an eight hour day. Tr.

1 29-30 (citing Tr. 98).⁹ The ALJ further found that the objective evidence,
2 including fairly benign spinal imaging, also contradicted Dr. Luera's more limited
3 assessment of Plaintiff's functioning. Tr. 30 (citing Tr. 382-83, 455-56) (December
4 2011 lumbar MRI showed only mild degenerative changes at the L4-5 level, and
5 the image was otherwise unremarkable); Tr. 24 (citing Tr. 639) (October 2012
6 pelvic MRI noted bilateral sacroiliitis). This was a specific, legitimate reason to
7 give limited weight to Dr. Luera's opinion.

8 The ALJ also found that Dr. Luera's opinion is inconsistent with Plaintiff's
9 actual functioning. An ALJ may discount an opinion that is inconsistent with a
10 claimant's reported functioning. *Morgan*, 169 F.3d at 601-602. Dr. Luera opined
11 in March 2014 that Plaintiff could not sustain even sedentary work. Tr. 30 (citing
12 Tr. 569). Yet, as the ALJ found, Dr. Luera rendered this opinion more than a year
13 after Plaintiff "had been *working* on a consistent basis." Tr. 30 (italics original).
14 The ALJ provided another specific, legitimate reason for affording Dr. Luera's
15 opinion limited weight.

16 _____
17 ⁹ The ALJ noted that Dr. Ignacio did not know that, at the time of the hearing,
18 Plaintiff testified that she was working at a job that required her to stand eight
19 hours a day and "it is very painful and exhausting"; as a result, the ALJ assessed
20 greater restrictions than Dr. Ignacio.

1 2. *Dr. Palasi*

2 Next, Plaintiff alleges the ALJ erred by failing to discuss or explicitly reject
3 the opinion of Myrna Palasi, M.D. ECF No. 14 at 17 (citing Tr. 358).

4 On April 2, 2012, Dr. Palasi performed a limited record review as part of
5 Plaintiff's GAU/GAX state benefit application. Tr. 358 (citing Dr. Luera's March
6 2012 opinion at Tr. 357). Although Dr. Luera opined in March 2012 that Plaintiff
7 could perform light work, Tr. 357, and Dr. Palasi reviewed the March 2012
8 opinion, Dr. Palasi stated "[d]ue to the severity of this [claimant's] condition,
9 recommend a less than sedentary RFC." Tr. 358. The ALJ did not discuss Dr.
10 Palasi's opinion.

11 Plaintiff contends the ALJ erred by failing to discuss Dr. Palasi's opinion.
12 In reaching a step five decision, the Secretary may not reject "significant probative
13 evidence" without explanation. *Flores v. Shalala*, 49 F.3d 562, 571 (9th Cir. 1995)
14 (citing *Vincent v. Heckler*, 739 F.2d 1393 1395 (9th Cir. 1984)). Plaintiff asserts
15 that *McCartey v Massanari*, 298 F.3d 1072, 1076 (9th Cir 2002), is analogous
16 authority because it addresses the "great weight" that an ALJ must ordinarily give
17 to a Veterans Administration determination of disability. ECF No. 14 at 18; ECF
18 No. 17 at 8. Defendant contends that Dr. Palasi's "opinion" is not significant
19 probative evidence because it is offered by a state agency, meaning that it is
20 entitled to less weight because it need not conform to the standards required by the

1 Social Security Act,¹⁰ and *McCartey* is limited to federal benefits programs.
2 Alternatively, Defendant contends that any error by the ALJ in failing to address
3 Dr. Palasi's opinion is harmless because, rather than an opinion that Plaintiff is
4 disabled, Dr. Palasi simply lists diagnoses and "recommends" sedentary work.
5 ECF No. 16 at 17, n. 7 (citing Tr. 358).

6 The Court does not discern harmful error in the ALJ's failure to consider Dr.
7 Palasi's opinion. Defendant is correct that Palasi's "opinion" does not assess any
8 functional limitations. Rather, as noted, Dr. Palasi lists two diagnoses: bilateral
9

10 _____
11 ¹⁰ Defendant cites 20 C.F.R. § 404.1504 ("a determination made by another agency
12 that you are blind or disabled is not binding on us."); *Wilson v. Heckler*, 761 F.2d
13 1383, 1385 (9th Cir. 1985) (the Court noted that "[p]rior to implementation of the
14 SSI program, the federal government assisted state aid programs for the disabled
15 with matching funds (citation omitted.). . . The SSI program established uniform
16 standards of eligibility which, in some cases, were more stringent than the
17 requirements for the state programs that SSI replaced."); *Little v. Richardson*, 471
18 F.2d 715, 716 (9th Cir. 1972) (when determining entitlement to Social Security
19 disability benefits, the Secretary is in no way bound by prior state disability
20 determinations).

1 sacroiliitis and ankylosing spondylitis¹¹ and “*recommend[s]* a less than sedentary
2 RFC.” Tr. 358 (italics added). Defendant is correct that an ALJ may reject a
3 medical opinion when the opinion does not include a specific assessment of a
4 claimant’s functional capacity. *See Johnson v. Shalala*, 60 F.3d 1428, 1443 (9th
5 Cir. 1995); *see also Turner v. Comm’r of Soc. Sec. Admin.*, 613 F.3d 1217, 1223
6 (9th Cir. 2010) (where physician’s report did not assign any specific limitations or
7 opinions in relation to an ability to work, “the ALJ did not need to provide ‘clear
8 and convincing reasons’ for rejecting [the] report because the ALJ did not reject
9 any of [the report’s] conclusions”); *Kay v. Heckler*, 754 F.2d 1545, 1549 (9th Cir.
10 1985) (the “mere diagnosis of an impairment ... is not sufficient to sustain a finding
11 of disability.”). Because Dr. Palasi did not include a specific assessment of
12 Plaintiff’s functional capacity, Tr. 358, her report was not significant probative
13 evidence that the ALJ was required to discuss.

14 Second, Dr. Palasi’s record review is not significant probative evidence
15 because it states that is based on the review of a single record – Dr. Luera’s March
16 2012 opinion that Plaintiff was capable of light work. Tr. 358 (referring to Tr.

17 _____
18 ¹¹ For the reasons addressed by the Court herein, the diagnosis of ankylosing
19 spondylitis was not medically established, making Dr. Palasi’s opinion even less
20 significant and probative.

357). The record does not indicate any basis for Dr. Palasi's apparent disagreement with the only record she reviewed. It is unclear why Dr. Palasi "recommended" sedentary work rather than light, the RFC that Dr. Luera had assessed. An ALJ may not credit the opinion of a reviewing physician over that of a treating physician, nor is an ALJ required to credit medical opinions that are unsupported by clinical findings, *Thomas*, 278 F.3d at 957. This Court finds any error by the ALJ in failing to discuss Dr. Palasi's opinion was clearly harmless. *Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir. 2007) (citing *Curry*, 925 F.2d at 1131) (finding ALJ error harmless because it did not affect the result)).

In sum, the ALJ assessed an RFC for a range of light work, Tr. 27-28, which credits in part the opinions of treating physician Dr. Luera (Tr. 345-49, 353-57); reviewing physicians Dr. Ignacio (Tr. 98-99, 111-12) and Dr. Gilbert (Tr. 101, 114); examining neurologist Dr. Moser (Tr. 350); and examining physician Dr. Miller (Tr. 488). Tr. 29-31. In addition, the ALJ found that the assessed RFC was consistent with the imaging studies, Tr. 30 (citing Tr. 568, 639) (noting an MRI in October 2012 showed bilateral sacroiliitis), and with Plaintiff's normal gait, strength in the lower extremities, and lack of neurological deficits on examination). Tr. 29 (citing Tr. 350, 424).

The ALJ properly weighed the medical evidence

1 **CONCLUSION**

2 After review, the Court finds that the ALJ's decision is supported by
3 substantial evidence and free of harmful legal error.

4 **IT IS ORDERED:**

5 1. Plaintiff's motion for summary judgment (ECF No. 14) is **DENIED**.

6 2. Defendant's motion for summary judgment (ECF No. 16) is **GRANTED**.

7 The District Court Executive is directed to file this Order, enter
8 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**
9 the file.

10 DATED this 23rd day of January, 2017.

11 S/Mary K. Dimke
12 MARY K. DIMKE
13 U.S. MAGISTRATE JUDGE
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